

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

Case No. 18-20495

v.

Hon. David M. Lawson

Ibraheem Izzy Musaibli,

Defendant.

_____ /

Motion for Leave to File Exhibits Under Seal

Ibraheem Musaibli moves this Court for leave to file under seal two exhibits to his Motion to Suppress Statements Made During His Interrogation Over Remote Messaging Applications and Custodial Statements Tainted by the Involuntary Statements Made During This Interrogation.

Defense counsel seeks to file under seal communications between Mr. Musaibli and the FBI through instant messaging applications Telegram and Facebook Messenger. These records were provided to the defense as discovery and is currently covered by the Stipulated Protective Order that this Court entered on August 7, 2018. Stipulated Protective Order, ECF No. 18, PageId.32-34. Defense counsel understands that the Stipulated Protective Order does not authorize the automatic sealing of records.

Documents used in criminal proceedings “may be closed to the public without violating the First Amendment only if three substantive requirements are satisfied: (1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) the closure is narrowly tailored to protect the compelling interest.” *United States v. Nallani*, Case No. 11-cr-20365, 2016 WL 4138227 (E.D. Mich. Aug. 3, 2016) (omitting citations).

The record proposed for sealing is a collection of communications between Mr. Musaibli and the FBI. The communication covers a large range of topics including information related to the investigation of Mr. Musaibli for the underlying charges. Allowing the filing of these two records under seal furthers the compelling interest that Mr. Musaibli not be prejudicially tainted in public before trial; that if publicly filed, the record will cause serious harm to Mr. Musaibli because it will confuse the legal issues involved in this case and the public’s perception of him; and that sealing for now the record will protect his compelling interest to a fair, legal process. Sealing such records until further order of this Court will protect Mr. Musaibli’s and the Government’s interest in empaneling a fair and impartial jury without preconceived judgements of the case.

Mr. Musaibli’s motion excerpts the portions of these records relevant to his claim. Presumably, the Government will excerpt any portions they

consider relevant to their response and any opinion by the Court will contain portions of it considers relevant. Because the portions of Mr. Musaibli's communications relevant to the motion before the Court are in the record, the public's right to access court proceedings is protected.

Per Local Rule 7.1(a), defense counsel communicated with the Government regarding this Motion and it concurs in the request to file such exhibits under seal. Government counsel also did not oppose the excerpting of portions of the records without redaction within the substantive motion.

Submitted,

/s/ Fabián Rentería Franco
James R. Gerometta
Fabián Rentería Franco
Counsel for Ibraheem I. Musaibli
FEDERAL COMMUNITY DEFENDER
613 Abbott Street, Suite 500
Detroit, Michigan 48226
Fabian_Renteria_Franco@fd.org
313.967.5542

John A. Shea (P37634)
Counsel for Ibraheem I. Musaibli
120 N. Fourth Avenue
Ann Arbor, Michigan 48104
734.995.4646
jashea@earthlink.net

Dated: December 31, 2020

Certificate of Service

I certify that on December 31, 2020, I filed

• **Motion for Leave to File Exhibits Under Seal**

through the court's docketing system, which should send notification to opposing counsel of record.

/s/ Fabián Rentería Franco

Fabián Rentería Franco

Counsel for Ibraheem Musaibli

FEDERAL COMMUNITY DEFENDER

613 Abbott St., Suite 500

Detroit, MI 48226

P: 313.463.6143

E: Fabian_Renteria_Franco@fd.org

Dated: December 31, 2020